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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
INTALCO ALUMINUM CORPORATION,

Appellant,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB Nos. 184 and 208

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

These matters, appeals of Notices of Penalty No. DE 72-157 and 176 having been consolidated for hearing, came on before the Board in Olympia, Washington on February 1, 1973, appellant appearing through its attorneys Lane, Powell, Moss and Miller, by Robert R. Davis, Jr., respondent appearing through its attorney by Wick Dufford, Assistant Attorney General, and the Board having heard the testimony, reviewed the transcript thereof, considered the exhibits and arguments, and being fully advised, makes and enters the following:

1 FINDINGS OF FACT

2 I.

3 Intalco Aluminum Corporation operates and maintains a primary
4 aluminum plant near Ferndale, Whatcom County, Washington. It has the
5 largest capacity of any such plant in the United States and when the
6 plant was constructed, expended approximately ten and one-half million
7 dollars on the air scrubbing system. There are 720 separate furnaces
8 in six separate buildings. After the plant became operative, appellant
9 in 1969 determined that additional air cleaning systems were necessary
10 to collect and further reduce emissions and air pollution from the
11 furnaces, and made diligent and expensive efforts to research and
12 design a system and method of doing so.

13 II.

14 On April 17, 1970, respondent assumed jurisdiction over emissions
15 from primary aluminum reduction plants in order to provide for the
16 reduction and control of air pollution in such industry, established
17 standards deemed to be technically and reasonably attainable and
18 adopted regulations to require, in accordance with a specific program
19 and timetable for each operating plant, the highest and best
20 practicable control of emissions of air pollutants and, on February 4,
21 1971 adopted regulatory fluoride standards. Respondent's regulations
22 governing compliance schedules established procedures for the
23 determination of the initial compliance schedule date, and amendments
24 or changes of such date, but in no case was full compliance to be later
25 than July 1, 1972. Respondent's Regulation, WAC 18-60-040, adopted
26 February 9, 1971, provides, in part:

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 "Any person who violates a regulatory order issued pursuant
2 hereto shall be subject to the sanctions provided in Chapter
3 70.94 RCW."

4 III.

5 Respondent and appellant jointly determined the method and time
6 of compliance and as a result thereof, respondent issued its
7 Regulatory Order No. 52-4, establishing a schedule and other require-
8 ments of compliance with Chapter 18-52 WAC. Such order required
9 compliance for fluoride emissions to be completed by July 1, 1972 and
10 was issued on March 31, 1971. Appellant in good faith believed that
11 it would be able to comply with such compliance schedule. However,
12 notwithstanding its diligence, appellant encountered engineering
13 problems in design and construction time and as a consequence,
14 respondent issued amended Regulatory Orders, which Orders revised
15 portions of the compliance schedule but reaffirmed the date of
16 July 1, 1972 as to compliance for fluoride emissions.

17 IV.

18 Appellant could not and did not timely and fully comply with
19 respondent's compliance schedule for fluoride emissions, but was in
20 compliance by November 1, 1972.

21 V.

22 Respondent advised appellant of the availability to appellant of
23 the legal devices of a variance or an assurance of discontinuance either
24 of which, if granted by respondent, would have excused appellant's non-
25 compliance with the fluoride standards. However, appellant chose not
26 to take advantage thereof during the period for which the civil penalties

27 FINDINGS OF FACT,

CONCLUSIONS AND ORDER

1 were assessed because to have done so would have had a prejudicial
2 affect upon numerous civil actions pending against appellant in which
3 eight million dollars in damages were sought. Appellant did thereafter
4 offer its assurance of discontinuance and it was accepted by respondent.

5 VI.

6 Respondent issued its Notices of Penalty against appellant on
7 August 7, 1972 in the amount of \$100.00 per day for the period of
8 July 1, 1972 through July 31, 1972 and on October 5, 1972 in the
9 same amount for the period of August 1 through August 31, 1972. The
10 total penalties were \$6,200.00. Such penalties were \$150.00 per day
11 less than the \$250.00 maximum because of the recognition by respondent
12 of appellant's good faith efforts to achieve compliance.

13 VII.

14 The imposition of such penalties did not hasten the day of
15 compliance and appellant's final entire system for the control of
16 air pollution when completed will be one of the best pollution control
17 facilities of any smelter in North America involving a capital
18 expenditure of in excess of 14 million dollars and a net equipment
19 operating cost of nearly 3 million dollars per year.

20 From the foregoing the Board enters the following

21 CONCLUSIONS OF LAW

22 I.

23 That appellant did violate respondent's Regulatory Orders and
24 such was unlawful.

25 II.

26 In view of mitigating circumstances not entirely in the control

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 of the appellant, the amount of the penalties are deemed to be
2 excessive.

3 From which follows this

4 DECISION

5 The penalty assessment under respondent's Docket No. DE 72-176 and
6 DE 72-157 are each reduced to \$100.00 for the first day's violation
7 therein and \$1.00 per day thereafter being total combined penalties of
8 \$269.00.

9 DONE at Lacey, Washington this 21st day of June, 1973.

10 POLLUTION CONTROL HEARINGS BOARD

11 [Signature]
12 WALT WOODWARD, Chairman

13 [Signature]
14 W. A. GISSBERG, Member

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16 JAMES T. SHEEHY, Member
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JUL 23 1973

Pollution Control Hearings Board

By Colours Island
Clerk

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
INTALCO ALUMINUM CORPORATION,

Appellant,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB Nos. 184 and 208

SATISFACTION OF PENALTY
ASSESSMENT

STATE OF WASHINGTON)
COUNTY OF THURSTON) as

WICK DUFFORD, being first duly sworn on oath deposes
and says:

I am the Assistant Attorney General for the State of
Washington and hereby acknowledge receipt from Intalco
Aluminum Corporation in the sum of \$269 in consideration for
satisfaction of the penalty assessed under respondent's
docket No. DE 72-176 and DE 72-157 as reduced in accordance
with the Findings of Fact, Conclusions, Order and Decision
of the Pollution Control hearings board entered on June 27,
1973. The said penalty assessment is hereby fully released,
discharged and satisfied.

EXECUTED this 20th day of July, 1973

ATTORNEY GENERAL
STATE OF WASHINGTON

By Wick Dufford
Wick Dufford, Assistant
Attorney General

SATISFACTION OF PENALTY
ASSESSMENT

LANE, POWELL, MOSS & MILLER
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SEATTLE, WASHINGTON 98101
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